

AMENDED IN ASSEMBLY SEPTEMBER 10, 2009

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN SENATE APRIL 29, 2009

SENATE BILL

No. 131

Introduced by Senators Wiggins and Yee

February 9, 2009

An act to add *and repeal* Section 25503.31~~to~~ of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Wiggins. Alcoholic beverages: tied-house restrictions: symphony associations.

The Alcoholic Beverage Control Act contains limitations on sales commonly known as “tied-house” restrictions, which generally prohibit a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any on-sale licensed premises. Existing law authorizes specific exceptions to this prohibition, including exceptions for donations and sales to nonprofit corporations.

This bill would additionally, *until December 31, 2014*, authorize~~the~~ monetary contributions and contributions of alcoholic beverages by *specified* alcoholic beverage licensees to a symphony association under specified circumstances, including that the symphony association has been incorporated in the City and County of San Francisco *by and through its predecessor organizations* for~~no less than 30 years a~~

specified amount of time. This bill would make findings regarding the need for special legislation.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional requirements on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25503.31 is added to the Business and
2 Professions Code, to read:
3 25503.31. (a) Notwithstanding any other provision of this
4 division, a beer manufacturer, holder of a winegrower's license,
5 a California winegrower's agent, a distilled spirits manufacturer,
6 holder of a distilled spirits rectifiers general license, a distilled
7 spirits manufacturer's agent, and a licensed retailer may make
8 monetary contributions or alcoholic beverage contributions of the
9 type that licensee is authorized to sell to a symphony association,
10 if all the following conditions are met:
11 (1) The symphony association is a nonprofit charitable
12 corporation or association exempt from payment of income taxes
13 under the provisions of the Internal Revenue Code of the United
14 States and Chapter 4 (commencing with Section 23701) of Part
15 11 of Division 2 of the Revenue and Taxation Code.
16 (2) The symphony association has been incorporated in the City
17 and County of San Francisco by and through its predecessor
18 organizations for not less than 99 years and produces not less than
19 175 musical events open to the general public per symphony
20 season.

(3) *The symphony association holds a retail on-sale license in a portion of its premises, provided that no contribution shall be used in or for the benefit of the symphony association's retail on-sale license.*

(4) *The contribution shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the beer manufacturer, holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, a distilled spirits manufacturer's agent, or a licensed retailer by the symphony association.*

(b) *The symphony association shall serve other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the contributing beer manufacturer; other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the contributing winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the contribution distilled spirits manufacturer or distilled spirits manufacturer's agent.*

(c) *For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license.*

(d) *The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.*

(e) *This section shall remain in effect only until December 31, 2014, and as of that date is repealed.*

1 ~~SECTION 1. Section 25503.31 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~25503.31. Notwithstanding any other provision of this division,~~
4 ~~a licensee that is licensed pursuant to this division may make~~
5 ~~monetary contributions or alcoholic beverage contributions to a~~
6 ~~symphony association, if the following conditions are met:~~

7 ~~(a) The symphony association is a nonprofit charitable~~
8 ~~corporation or association exempt from payment of income taxes~~
9 ~~under the provisions of the Internal Revenue Code of the United~~
10 ~~States and Chapter 4 (commencing with Section 23701) of Part~~
11 ~~11 of Division 2 of the Revenue and Taxation Code.~~

12 ~~(b) The symphony association has been incorporated in the City~~
13 ~~and County of San Francisco for not less than 30 years and~~
14 ~~produces not less than 175 musical events open to the general~~
15 ~~public per symphony season.~~

16 ~~(c) The symphony association holds a retail on-sale license in~~
17 ~~a portion of its premises, provided that no such gift shall be used~~
18 ~~in or for the benefit of the symphony association's retail on-sale~~
19 ~~license.~~

20 ~~(d) The symphony association does not make an agreement of~~
21 ~~any kind with, offer any quid pro quo to, or participate in any~~
22 ~~arrangement by which, the donor of the gift that provides the donor~~
23 ~~or its wholesaler with preferential treatment in the choice and~~
24 ~~purchase of alcoholic beverages by the symphony association for~~
25 ~~use in its licensed premises.~~

26 ~~SEC. 2. The Legislature finds and declares that, because of the~~
27 ~~unique circumstances, and the cultural importance of the San~~
28 ~~Francisco Symphony, a statute of general applicability cannot be~~
29 ~~enacted within the meaning of subdivision (b) of Section 16 of~~
30 ~~Article IV of the California Constitution, and, therefore, this special~~
31 ~~statute is necessary.~~

32 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
33 ~~Section 6 of Article XIII B of the California Constitution because~~
34 ~~the only costs that may be incurred by a local agency or school~~
35 ~~district will be incurred because this act creates a new crime or~~
36 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
37 ~~for a crime or infraction, within the meaning of Section 17556 of~~
38 ~~the Government Code, or changes the definition of a crime within~~
39 ~~the meaning of Section 6 of Article XIII B of the California~~
40 ~~Constitution.~~

1 SEC. 4. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to allow the San Francisco Symphony to continue to
6 provide performing arts and to authorize the receipt of donations
7 to facilitate that provision, it is necessary that this act take effect
8 immediately.